

## OPINION NO. 74-097

## Syllabus:

With the exception of physical and psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law, R.C. 149.43 requires all court records to be kept open for inspection at all reasonable times. The public's right to inspect court records pursuant to R.C. 149.43 may not be restricted by a court because of the intended purpose of such inspection.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio  
By: William J. Brown, Attorney General, November 22, 1974

Your request for my opinion poses the following question:

"Under Ohio Revised Code Section 149.43 does a judge of any court in Ohio have discretionary powers to restrict inspection of a court record when the person requesting such record specifically indicates the purpose of such request is to make use of the record for commercial or professional sales solicitation. And, further under said statute, is a judge of a court deprived of any and all control of a court record regardless of whether the applicant intends to use it for a malicious purpose, or purpose not applicable to the instant case, but inherent in a decision which would deny the court any and all discretionary power?"

R.C. 149.43 reads:

"As used in this section, 'public record' means any record required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units, except records pertaining to physical or psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law.

"All public records shall be open at all reasonable times for inspection. Upon request, a person responsible for public records shall make copies available at cost, within a reasonable period of time."

This Section was enacted in 1963 (130 Ohio 155), and creates a public right to inspect public records. On this point see State, ex rel. White v. City of Cleveland, 34 Ohio St. 2d 37 (1973), which involved an action in mandamus to obtain certain building and architectural plans filed with the Commissioner of the Division of Building of the City of Cleveland. The court in characterizing that suit as a taxpayer's action to enforce a right of action on behalf of and for the benefit of the general public, stated at p. 40:

"In the present action, it is clear that R.C. 149.43 establishes a public right to the inspection and copying of public records and imposes upon municipal corporations the mandatory duty to permit same."

The definition of "public record" in R.C. 149.43 is further clarified by R.C. 149.40, which provides in part:

"Any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office, is a record within the meaning of sections 149.31 to 149.44, inclusive, of the Revised Code.

" \* \* \* \* \* " \* \* \* \* "

Thus, in Opinion No. 67-018, Opinions of the Attorney General for 1967, my predecessor held that transcripts prepared by a court reporter pursuant to R.C. 2301.23 are available to disinterested parties upon demand as public records under the terms of R.C. 149.43. See also Opinion No. 71-053, Opinions of the Attorney General for 1971, and Opinion No. 73-034, Opinions of the Attorney General for 1973. In the latter opinion I noted that it is the requirement that a record be kept which makes it "public" in nature. On this point, see Curran v. Board of Park Commrs., 22 Ohio Misc. 197 (1970), which held that a county park board's records are subject to R.C. 149.43.

It follows that those records which a court is required to keep are, with the exceptions noted in R.C. 149.43, public records, which must be open at all reasonable times for inspection.

You have suggested, however, that a judge has inherent discretion under R.C. 149.43 to restrict inspection of records when the applicant intends to use it for a malicious purpose, or for a purpose not applicable to the case. However, neither R.C. 149.43 nor earlier Ohio case law would appear to authorize such a restriction of the public's right to inspect. For example, in State, ex rel. Patterson v. Ayers, 171 Ohio St. 369 (1960), the court held that the right was subject only to the limitation that such inspection does not endanger the safety of the record,

or unreasonably interfere with the discharge of the duties of the officer having custody of the records. See also State, ex rel. Louisville Title Ins. Co. v. Brewer, 147 Ohio St. 161 (1946), to the same effect.

R.C. 149.43 states flatly that "all public records shall be open at all reasonable times for inspection." The only qualification of this mandate is in the definition of "public records." Records pertaining to physical or psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law are expressly excepted from this definition and hence from the requirement that they be open to public inspection.

Under the maxim, expressio unius est exclusio alterius, the enumeration of specific exceptions to a statutory requirement indicates a legislative intent to include within the scope of the requirement all situations not expressly excepted. State, ex rel. Boda v. Brown, 157 Ohio St. 368 (1952); Akron Transportation Co. v. Glander, 155 Ohio St. 471 (1951); Opinion No. 74-010, Opinions of the Attorney General for 1974.

In the present case the General Assembly qualified the mandate of R.C. 149.43 only in the case of certain specified records. I must, therefore, conclude that the public's right under R.C. 149.43 to inspect public records may not be restricted as to the purpose of the inspection or the use to be made of the records.

In specific answer to your question, it is my opinion and you are so advised that with the exception of physical and psychiatric examinations, adoption, probation, and parole proceedings, and records the release of which is prohibited by state or federal law, R.C. 149.43 requires all court records to be kept open for inspection at all reasonable times. The public's right to inspect court records pursuant to R.C. 149.43 may not be restricted by a court because of the intended purpose of such inspection.